

HOUSE BILL REPORT

SHB 1435

As Passed Legislature

Title: An act relating to clarifying agency relationships in reconveyances of deeds of trust.

Brief Description: Clarifying agency relationships in reconveyances of deeds of trust.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman and Nealey).

Brief History:

Committee Activity:

Judiciary: 2/14/13, 2/21/13 [DPS].

Floor Activity:

Passed House: 3/11/13, 95-0.

Passed Senate: 4/15/13, 48-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Provides for the reconveyance of a deed of trust when a beneficiary who has been paid in full fails to request reconveyance.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Cece Clynch (786-7195).

Background:

Deeds of Trust.

A deed of trust is a type of security interest in real property. Basically, a deed of trust is a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real

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property to a third party (trustee) who holds the deed in trust as security for an obligation due to the lender (beneficiary).

A trustee must reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto upon:

- written request of the beneficiary; *or*
- satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

The deeds of trust statutes do not specify a particular time frame for reconveyance. However, unless specifically provided for otherwise, deeds of trust are subject to all the laws relating to mortgages on real property. Under the mortgage laws, when the amount on a mortgage is paid and at the request of any person interested in the property, the mortgagee must execute an instrument in writing acknowledging that the mortgage has been satisfied. Upon request, the written instrument must be recorded in the county where the property is located. If a mortgagee fails to acknowledge satisfaction of the mortgage within 60 days from the date of the request, the mortgagee is liable to the mortgagor for damages and a reasonable attorney's fee, to be recovered in court.

Trustee.

The following persons and entities may act as a trustee of a deed of trust: title insurance companies; attorneys; a variety of business entities; a variety of banks; and any agency or instrumentality of the federal government.

The trustee may resign at its own election or be replaced by the beneficiary. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary appoints a trustee or a successor trustee. Only upon recording the appointment in each county in which the deed of trust is recorded, does the successor trustee become vested with all powers of an original trustee.

A trustee has no fiduciary duty or obligation to the grantor or other persons having an interest in the property. The trustee does, however, have a duty of good faith to the borrower, beneficiary, and grantor.

Summary of Substitute Bill:

Reconveying a Deed of Trust.

The reference to "trustee" is changed to "trustee of record," and it is the trustee of record that has the obligation to reconvey upon written request of the beneficiary or satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

New provisions are added for situations in which the beneficiary has received payment as set forth in its demand statement but fails to request reconveyance within the 60-day period specified under the mortgage laws. A title insurance company or agent, a licensed escrow agent, or an attorney admitted to practice in Washington, who has paid the demand in full from escrow, may act as agent (and is hereafter referred to as "agent"), for the person entitled

to receive reconveyance. Upon receipt of notice of the beneficiary's failure to request reconveyance, the agent may submit proof of satisfaction and request the trustee of record to reconvey the deed of trust.

If the trustee of record is unable or unwilling to reconvey within 120 days following payment to the beneficiary per the beneficiary's demand statement, then the agent may record a notarized Declaration of Payment with each county auditor where the original deed of trust was recorded. The Declaration of Payment must:

- identify the deed of trust, including the original grantor, beneficiary, trustee, loan number if available, and the recording number and date;
- state the amount, date, and name of the beneficiary and means of payment; and
- include a declaration that payment tendered was sufficient to meet the demand and that no written objections have been received.

A copy of the Declaration of Payment must be sent by certified mail to the last known address of the beneficiary and the trustee of record not later than two business days following the date the declaration is recorded. The beneficiary or trustee of record then has 60 days from the date of recording to record an Objection to Declaration of Payment. If no such Objection is recorded within 60 days following recording of the notarized Declaration of Payment, any lien of the deed of trust against the real property encumbered ceases to exist.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Once a person pays off a mortgage, the deed of trust needs to be reconveyed. Without reconveyance, the lien remains. This bill will address those situations in which the mortgage has been repaid but the deed of trust has not been reconveyed. The approach taken is similar to that taken under the Uniform Commercial Code Article 9 that is applicable to secured transactions. In the title insurance business, it is not uncommon to have a situation when the lender is paid off but the reconveyance does not occur as it should. It is very frustrating and people get angry. What happens is that the beneficiary neglects to request reconveyance or the trustee simply fails to reconvey. This bill will provide a tool that can be used in that situation. Almost every state has a tool of some kind to deal with these situations. This has been a long term effort to get such a bill on which the various parties agree, and the perseverance of the sponsors is appreciated. Without such a tool, there is no way to force lenders to act other than to continually harass them, sometimes to no avail. This helps buyers and sellers.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Representative Nealey; Gary Kissling and Dwight Bickel, Washington Land Title Association; Janelle Wheeler, Escrow Association of Washington; and Bob Mitchell, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.